

DEPARTMENT OF THE TREASURY

CUSTOMS SERVICE

[T.D. 02-]

**NOTICE OF DECISION OF THE UNITED STATES COURT OF
INTERNATIONAL TRADE SUSTAINING DOMESTIC INTERESTED PARTY
PETITION CONCERNING TARIFF CLASSIFICATION OF TEXTILE
COSTUMES**

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of a decision of the United States Court of International Trade sustaining domestic interested party petition concerning tariff classification of textile costumes.

SUMMARY: On February 19, 2002, the United States Court of International Trade (CIT) issued the decision in Rubie's Costume Company v. United States which held that imported costumes are fancy dress of textile and, therefore, classifiable as wearing apparel. This decision sustained the petition of a domestic interested party under the provisions of section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516). This document provides notice of the court decision and informs the public that imported textile costumes of the character covered by the Customs decision published in the **Federal Register** on December 4, 1998, will be subject to classification and assessment of duty in accordance with the CIT decision.

EFFECTIVE DATES: Imported textile costumes of the character covered by the Customs decision published in the **Federal Register** on December 4, 1998, which are entered for consumption or withdrawn from warehouse for consumption after [insert date of publication of this document in the **Federal Register**] are to be classified when entered as wearing apparel in accordance with the CIT decision in Rubie's Costume Company v. United States. The Committee for the Implementation of Textile Agreements (CITA) intends to apply quota and visa requirements to these goods exported on and after April 1, 2002.

FOR FURTHER INFORMATION CONTACT: For questions regarding operations, Dick Crichton, Office of Field Operations, (202) 927-0162; for legal questions, Rebecca Hollaway, Office of Regulations and Rulings, (202) 927-2394.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On June 2, 1997, in response to a domestic manufacturer's request, Customs issued a decision, Headquarters Ruling (HQ) 959545, determining that four costumes and their accessories would be classified under subheading 9505.90.6090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Festive carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof; Other: Other: Other." This provision provided for duty-free entry under the general column one rate of duty. (Effective August 1, 1997, the provision was amended and now reads as follows: 9505.90.6000, HTSUS, "Festive, carnival or other

entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other,” which provides for duty-free entry under the general column one rate of duty.)

In July 1997, and in accordance with the procedures of 19 U.S.C. 1516 and 19 CFR Part 175, a domestic interested party petition was filed on behalf of an American manufacturer of textile costumes. The petitioner contended that virtually identical costumes to those manufactured by petitioner were being imported into the United States and some of these textile costumes were being erroneously classified by Customs, duty-free, under subheading 9505.90.6090, HTSUS. The petitioner claimed that all imported textile costumes should be classified as wearing apparel in Chapters 61 or 62, HTSUS, are therefore dutiable, and may be subject to quota and visa restraints. Petitioner asserted that all textile costumes are excluded from classification under subheading 9505.90.6090, HTSUS, pursuant to Note 1(e), Chapter 95.

Notice of the domestic interested party petition was published in the **Federal Register** on December 27, 1997 (62 FR 66891). After reviewing comments submitted in response to the notice that were supportive of and opposed to Customs classification position, Customs, in HQ 961447, dated July 22, 1998, denied the petition and affirmed the classification determination set forth in HQ 959545. The decision rejected the domestic interested party petition’s argument that all imported costumes made of textiles should be classified under Chapters 61 and 62, HTSUS, as items of apparel.

On July 23, 1998, the domestic manufacturer filed written notice of its desire to contest Customs decision in HQ 961447 (19 U.S.C. 1516(c); 19 CFR 175.23). Subsequently, Customs published in the **Federal Register** (63 FR 67170; December 4, 1998) a notice of its classification decision and of the domestic manufacturer's desire to contest the decision. On June 25, 1999, Customs notified the domestic manufacturer that an entry of a costume had been liquidated in accordance with HQ 961447 on that date (19 U.S.C. 1516(c); 19 CFR 175.25(h)). On June 29, 1999, the domestic manufacturer commenced an action in the United States Court of International Trade (CIT) to challenge Customs classification decision.

The CIT, in Rubie's Costume Company v. United States, No. 99-06-00388, Slip Op. 02-14, (CIT Feb. 19, 2002), ruled, on a motion for summary judgment decided in favor of plaintiff domestic manufacturer, that the costumes constitute "fancy dress" and are thus excluded from classification in Chapter 95, HTSUS, by virtue of Note 1(e) to Chapter 95, HTSUS. Thus, the court held that the costumes are wearing apparel classifiable in Chapter 61, HTSUS. (To view the court's decision, go to <http://www.uscit.gov>. Note also that the Rubie's decision will be published in the Customs Bulletin issued on March 6, 2002.)

By publication of this notice in the **Federal Register**, Customs notifies the public, in accordance with 19 U.S.C. 1516(f) and 19 CFR 175.31, of the court's decision in Rubie's. Customs also informs the public that, effective on the day after publication of this notice in the **Federal Register**, merchandise of the character covered by the Customs decision published in the **Federal Register** on

December 4, 1998, which is entered for consumption or withdrawn from warehouse for consumption will be subject to classification in accordance with the court's decision. Also, as tariff subheadings under Chapters 61 and 62, HTSUS, are subject to quota and visa restraints, Customs notes that CITA intends to apply applicable quota and visa requirements to merchandise of the character covered by the Customs decision published in the **Federal Register** on December 4, 1998, that is exported on and after April 1, 2002.

Dated:

Acting Assistant Commissioner
Office of Regulations and Rulings